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May 13, 2016

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 7031 – Children of Israel, LLC and Shaofen Gao

Dear Mr. Jordan:

We are writing on behalf of Children of Israel, LLC ("Children") and Shaofen Gao in response to a complaint filed on March 29, 2016 by the Campaign Legal Center, Democracy 21 and Lawrence M. Noble (the "Complaint") alleging that Children and Ms. Gao violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the Complaint alleges that Ms. Gao and any other person who created, operated, and/or contributed to Children may have violated the Act by:

- 1) Making contributions to an independent expenditure-only political committee in the "name of another person," namely Children, in alleged violation of 52 U.S.C. § 30122, and that Children may have violated the Act by knowingly permitting its name to be used for such contributions; and
- 2) Failing to organize Children as a "political committee" as defined in 52 U.S.C. § 30101(4), and to register and report as such.

I. FACTUAL BACKGROUND

Children was created in California on June 8, 2015 and is a manager-managed LLC. Ms. Gao is the manager, and Benjerome Trust is the sole member. Under the terms of the LLC agreement ("Agreement"), the purpose of the LLC is to engage in any activities that are

lawful under its creating statute.¹ The LLC agreement provides that the manager has the power to do any acts necessary in furtherance of such purpose, and controls the management and operation of the Company in her sole and absolute discretion. On its Statement of Information filed with the California Secretary of State, Children lists its type of business as "donations."

From its inception in June of 2015 to date, Children has operated to make both charitable and permissible political contributions. These include the political contributions noted in the Complaint to Pursuing America's Greatness and Stand for Truth, Inc. and also include charitable contributions of \$150,000 to American Friends of Shavei Yisrael, Inc., an Internal Revenue Code § 501(c)(3) public charity.

II. LEGAL ANALYSIS

A well-publicized line of cases and Commission Advisory Opinions has established the right of individuals, political committees, labor organizations, and corporations to make unlimited contributions to entities such as Pursuing America's Greatness and Stand for Truth, Inc. (the "Committees") that make only independent expenditures. *See Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (*en banc*); Advisory Opinion 2010-09 (Club for Growth); Advisory Opinion 2010-11 (Commonsense Ten). Accordingly, it is settled law that Children was and is entitled to make contributions in any amount to the Committees. Furthermore, these cases and opinions inherently recognize that a company has an identity as a donor with its own distinct right to make contributions.

Moreover, in a recently released Statement of Reasons (the "Statement") for having voted to dismiss several matters under review ("MURs") that alleged violations of the name-of-another prohibition by the use of LLCs, three Commissioners wrote that pursuing enforcement against the respondents in the MURs at issue would have been "manifestly unfair because Commission precedent does not provide adequate notice regarding the application of section 30122 to closely held corporations and corporate LLCs or the proper standards for its application."² The Commissioners explained that Commission precedent in past enforcement actions treats funds deposited in a corporate account as the corporation's funds, even if the corporation's sole owner can legally convert them into his or her own personal funds and

¹ The creating statute is the California Revised Uniform Limited Liability Company Act, California Corporations Code § 17701.01 *et seq.* Under this statute, an LLC is distinct from its members and may be formed for any lawful purpose except for the banking or trust company business, or the business of issuing policies of insurance and assuming insurance risks. Ca. Corporations Code § 17701.4.

² Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MURs 6485, 6487 and 6488, 6711, and 6930, W Spann LLC, et al., page 8 (April 1, 2016).

exercises control over the corporate decision to contribute.³ The Commissioners further noted that in a prior rulemaking, the Commission rejected a proposal to deem contributions by closely held corporate LLCs as contributions from their individual owners, even in the case of single-member LLCs.⁴

The Commissioners wrote that while they agreed that under certain circumstances closely held corporations and corporate LLCs may be straw donors, given the Commission's historical treatment of contributions by closely held corporations and LLCs it was reasonable for the respondents in the MURS to conclude that the LLCs' contributions were lawful and not contributions in the name of another. As a result, the Commissioners voted to dismiss the MURS because the respondents did not have adequate notice that their contributions could potentially violate section 30122, and thus applying section 30122 to the respondents would have been inconsistent with due process principles.⁵

Here, given that the contributions at issue were made by Children, which at the time had been in existence and operating with a bona fide purpose under California law, Ms. Gao and Children refute the allegation that the contributions were made in the name of another person in violation of the Act and FEC regulations. Rather, Children's charitable and political contributions were made in accordance with its governing documents, and the contributions to the Committees were reported by the recipients accordingly. Furthermore, finding any reason to believe that Children, Ms. Gao or any donor to Children violated section 30122 would be manifestly unfair and inconsistent with due process principles because they did not have adequate notice of the potential application of section 30122 to contributions by Children, nor adequate notice of the proper standards for such application.

The Complainants further allege that Children was required to register and report as a "political committee" as defined in 52 U.S.C. § 30101(4). Children does not meet the Act's definition of "political committee" and as a result is not required to register and report as such, for the following reasons:

A The "major purpose" of Children was – and is – to make donations of all kinds, including charitable and political donations, not to secure the election or nomination of any federal candidate;

B. Children did not accept contributions or make expenditures within the meaning of 52 U.S.C. § 30101(8) and (9).

³ Id., pages 9-11.

⁴ Id., page 11.

⁵ Id., pages 11 and 13.

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III. CONCLUSION

For the reasons set forth above, we respectfully request that the Commission dismiss the Complaint and find no reason to believe that Children, Ms. Gao, or any person who contributed to Children, violated the Act.

Please do not hesitate to contact us with any questions or requests for additional information.

Sincerely,

Kenneth A. Gross
Kenneth A. Gross

Patricia M. Zweibel
Patricia M. Zweibel
Attorneys for Children of Israel, LLC
and Shaofen Gao

cc: Shaofen Gao